

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 07-0430V

Filed: June 20, 2008

Not To Be Published

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SHENQUENCY GOWDY, a minor, by his  
parent and natural guardian  
SHEILA WATSON

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES

Respondent.

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Autism; Statute of Limitations;  
Untimely Filing

*Richard A. Freese, Birmingham, AL, for petitioner.*

*Linda S. Renzi, United States Department of Justice, Washington, DC, for respondent.*

### **DECISION<sup>1</sup>**

The above-named petitioners filed a Short-Form Autism Petition For Vaccine Compensation on June 27, 2007, as well as a “Statement Regarding Timely Filing” and medical records on October 29, 2007. Respondent filed a Motion for Order to Show Cause on December 14, 2007, asking that the undersigned issue an order requiring petitioner to show cause why this case should not be dismissed as “the evidence in this case fails to establish that the jurisdictional

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<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. Id.

prerequisites of the Vaccine Act have been met.”<sup>2</sup> Respondent’s Motion for Order to Show Cause at 3. Petitioners filed a Response to Respondent’s Motion for Order to Show Cause on January 30 , 2008, contesting respondent’s Motion for Order to Show Cause .

The undersigned held a telephonic status conference on June 12, 2008 to discuss respondent’s Motion for Order to Show Cause. As the undersigned discussed with counsel at the telephonic status conference, despite the passionate arguments of petitioners’ counsel, Richard Freese, on behalf of his clients, it is clear from the medical records this case was not filed within “36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury” as required by the Vaccine Act. 42 U.S.C. § 300aa-16(a)(2). Petitioners were not able to point to any medical record showing a timely filing.

Accordingly, the undersigned finds that petitioners’ claim must be dismissed as petitioner has not proved by a preponderance of the evidence that the petition was filed within “36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury” as required by the Vaccine Act. Petitioners’ claim is **dismissed**. Therefore in the absence of a Motion for Review filed under RCFC Appendix B, the Clerk shall enter judgment accordingly.

**IT IS SO ORDERED.**

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Gary J. Golkiewicz  
Chief Special Master

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<sup>2</sup> In relevant part, the Vaccine Act provides “in the case of”

a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury . . . .

42 U.S.C. § 300aa-16(a)(2).